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Switzerland – Report, Section IV - VI (Agenda item 5)

IV. Environment-related instruments

- Switzerland understands the rationale for including a chapter on environment-related instruments in the report by the Secretary General. Undoubtedly, decisions in other fora do have a strong impact on the environment. However, in our view, the current chapter is missing three highly relevant aspects.
- First, the four instruments listed clearly have an influence on the environment. However, it is but a selection of instruments and by no means exhaustive as it is for instance missing a reference to development instruments or a reference to humanitarian law with regard to protecting the environment in armed conflicts as stated in UNEA Resolution 2/15.
- Second, it cannot be the role of UNEP to address issues where other UN agencies are obviously in the lead. Such efforts for instance in the realm of Intellectual Property Rights are not only falsely placed but they also divert resources from the core mandate of UNEP and the member states' representatives.
- Third, we consider it the primary duty of the Member States to ensure coherence regarding environmental matters across all policies. The present chapter in the Secretary General's report does not address and clarify this important aspect of environment-related instruments.
- Now, regardless of the just mentioned three aspects: Of course, instruments or processes which have a substantial impact on the environment should and need to take into account the environmental dimension better and more systematically. And it is in this sense, that we need environmental governance and in particular UNEP further strengthened so that the environmental dimension is heard and better reflected in processes which lie outside of UNEP's core mandate but still within its influence.
- Having said that, we would like to emphasize that there is no hierarchy between the processes at UNEP and other UN Entities. On the contrary, the processes should be mutually supportive of one another while respecting the appropriate thematic leadership.
- Finally, while UNEP must be empowered to streamline the environment in United Nations' and other international governance processes, we as Member States, however, should also be prepared to do the same on our national levels to support international environmental governance from bottom-up.

V. Gaps relating to the governance structure of international environmental law

- The report speaks of the negative results that stem from a proliferation of multilateral environmental agreements and the resultant distinct and separate mandates. The report, however, does not speak to the benefits that can emerge in actually having distinct agreements. The benefit in having distinct MEAs is that environmental issues are well-defined and can be tackled in a concrete manner. In this regard, reporting and compliance are more straightforward, or data can be standardized, among others. Also, it allows that a specific MEA can be legally binding. A broader and overarching instrument on the other hand may never reach the status of such a negotiated instrument on a specific matter.
- One of the recommendations is the establishment of synergies among clusters. Switzerland has been and continues to be a strong advocate for increasing the synergies in the chemical and waste, biodiversity and other clusters. There are many benefits pertaining to increasing synergies, among others to reporting and monitoring and decreasing the burden for member states, and in doing so improving the implementation of MEAs.
- Another element concerns the participation of non-state actors. We would like to highlight and emphasize the Aarhus Convention that has the broadest regulation with regard to the participation of other stakeholders, the High Level Political Forum on Sustainable Development is another example that allows for an active participation of non-state actors.

Regarding the governance structure of international environmental law, as it addressed in this chapter, Switzerland is of the opinion that:

- Improving the implementation itself mainly depends on the political will.
- Overarching principles cannot address the gaps in this area. We must assure that we choose bottom up approaches. The response options in this respect are for example synergies among MEAs in order to decrease overlap and increase coordination;
- And, as mentioned before in previous interventions the Global Environmental Goals can serve a response option to streamline the engagement of the various MEAs;

In summary, the practical experience has shown us that improving the international governance structures is needed to better address the gaps in implementation and to stimulate the political will.

VI. Gaps relating to the implementation and effectiveness of international environmental law

A. National implementation

- We agree with the general observation that many countries face challenges associated with the implementation of multiple MEAs and with the different reasons for these challenges. In Switzerland most of environmental law has to be enforced by sub-national entities, namely our cantons. As a federal country we therefore face similar challenges with the implementation of our national law at the sub-national level. In this sense it would be interesting to compare the implementation challenges and the measures to overcome these challenges both at the national and sub-national levels.
- With regard to the mentioning of the synergy process under the BRS-Conventions as a good example for enhanced coherence, synergy and coordination, we would like to mention the difficult negotiations at the COP2 of the Minamata Convention on Mercury regarding the coordination between the Minamata- and the BRS Secretariat. These negotiations show that synergy processes need a lot of persuasive work to be initiated and implemented.
- We consider it necessary to mention the link between good regulation and effective implementation. The work of the “interest group on better regulation” of the “Environmental Protection Agencies Network (EPA)” can be seen as an example in this regard.

B. Means of implementation: financial resources, technology transfer and capacity-building

- Regarding the observation that funding for implementation remains insufficient, unpredictable and incoherent and varies considerably between the different regimes, we consider it first and foremost a problem of implementation of already existing provisions of financial mechanisms, technology transfer and capacity-building in many MEAs.
- We would like to point out that global funding mechanisms for the environment exist like the GEF or the GCF.
- It should also be noted that UNEP’s Montevideo Program broadly aims at providing legal technical assistance and capacity-building training in order to promote wider appreciation of environmental law.

C. Dispute settlement, compliance and enforcement mechanisms

- Concerning the statement that compliance bodies are at the intersection of diplomacy and law, we consider it necessary to mention the highly political aspect of these bodies which influences both the establishment as well as the functioning of the compliance mechanisms. As an example the SG report could have mentioned the lengthy negotiations on the establishment of such mechanisms within the Stockholm- and Rotterdam Conventions – negotiations which until now are unsuccessful due to the lack of political will.

D. Liability and redress for transboundary environmental damage

- We are missing a general explanation why liability regimes play such a subordinate role in international environmental law and why the report claims it to be a major gap in the environmental law.

